

Overview from Greg Boston Town Planner

At the Ordinary Council meeting of 24th September 2019 the Council resolved:

That Council:

A: Pursuant to section 25 (2) of the Heritage Act 1977, make an Interim Heritage Order for 212 Whistler Street Manly, being Lot B DP 368451 (the property) as the Council considers that a building on the property may, on further investigation, be found to be of local heritage significance and that it is likely to be harmed.

We note that no further investigation has been undertaken since this resolution with Council staff continue to rely on the Robertson Report of 1st July 2019. We also note that Robertson and Hindmarsh prepared their report without ever inspecting the fabric of 21 Whistler Street Manly.

The basis for the listing as detailed initially in the Full Circle Heritage (April 2019) report and as later concurred to within the Robertson (July 2019) report was that:

Given the discrepancy between the Heritage Impact Statement and Council assessment of the level of heritage significance, a heritage consultant (Full Circle Heritage) was engaged to undertake an independent assessment in April 2019.

The results of the assessment indicated that based on the material available, the building could meet the threshold for inclusion in the Manly Local Environmental Plan 2013 as an item of local heritage significance. The assessment found that 21 Whistler Street, Manly contained the remains of the former service wing of a much larger dwelling called 'Roseville' that Rowe himself designed and constructed in 1876/7. Rowe owned the property for a number of years and resided there for a period while serving as the first Mayor of Manly Council. The assessment concluded with the recommendation to undertake additional research and assessment to obtain a greater understanding of the heritage significance of the building, including an assessment against the NSW Heritage Office's guidelines and criteria for heritage listing. Based on the recommendation Council engaged a heritage consultant to undertake the additional research and assessment.

Robertson and Hindmarsh Architects (RHA) were engaged in June 2019 to undertake the additional research. RHA concurred with the findings of Full Circle Heritage, that the property contained the remnants of the service wing of 'Roseville' and further expanded on that research. The assessment indicated that the property was a rare example of a Rowe building in Manly and furthermore the survival of the service wing demonstrated Rowe's philosophy and approach to sanitation and public health in building design.

Having reviewed the Council report and our additional research to date the actual facts would appear to be as follows:

1. Thomas Rowe did not own Roseville and never did.

There is no evidence that Thomas Rowe ever owned Roseville.

Written legal advice, based on registered, signed legal conveyancing contracts and title searches, has confirmed that, on 21 May 1875, Sydney Green became the owner of Roseville and that Charlotte Rowe, Thomas Rowe's wife at that time, was allowed to be a tenant for her natural life. Charlotte passed away around 18 months later, aged 38, and Sydney Green took possession of the property (see attached O'Brien Connors and Kennett Lawyers advice dated 3 December 2019).

It would appear that Charlotte stayed in Manly for the sea air because she was very ill as witnessed by her passing away so soon at such a young age.

It is inconceivable that Thomas Rowe could run the largest architectural firm in NSW which was at its peak in 1875, whose primary works were commercial buildings and churches in the city of Sydney and Bathurst, from a small, undeveloped suburb like Manly with only ferry access that would not work in inclement weather and with essentially no communications.

2. **There is no evidence to suggest that Thomas Rowe designed and/ or built "Roseville";** Council's consultants have not supplied any credible evidence that Rowe built or designed Roseville. Extensive research has been carried out on his documented works in libraries, universities and all the known data bases and there is not one mention of Roseville in them or that he built or designed a home for himself in Manly. Records in Manly Library Historical section state other builders built Roseville, not Rowe. When Sydney Green, an architect, bought Roseville on 21 May 1875 and gave Charlotte Rowe the right to tenant it, there was presumably a house already on the property, also confirming that Rowe did not build it.
3. **There is no evidence to suggest that Thomas Rowe lived in "Roseville";** Thomas Rowe was only noted as staying there whilst Charlotte was the tenant (refer to O'Brien Connors and Kennett Lawyers advice dated 3 December 2019). Thomas Rowe owned Tresco, one of the most prestigious estates on the water front at Elizabeth Bay from 1874 to well into 1890s. He finished building it in 1875.
4. **The southern addition was built after 1920 and as late as 1950.** Council's consultants claim that the south east addition to the property was built by 1890 (see attached plan included in the Robertson Report) is incorrect. The primary dwelling form known as "Roseville" was demolished before 1920 with the only potential physical evidence remaining being a remnant section of the service building backing onto Whistler Street.

Further research carried out by Norton Surveyors provides irrefutable evidence that there was a stone building in the south east corner of the property in 1920 whilst it is brick today (see attached Norton Survey Partners letter 6 December 2019).

The existing southern addition must have been built after 1920 and as late as 1950. This is the first reliable confirmation of dates that has been available and totally contradicts the claims by Council of before 1890. The only other records Council has is a DA in 1967 which is the first time that doors and windows on the street elevation have been shown. The next DA was in 1976 which was for the substantial A frame besser block addition to the north.

5. **This possible remnant section of building has been highly modified, 1960s bathroom and walls and largely demolished such that no physical evidence remains of the earth closet, no physical evidence remains of the laundry other than room volume and no evidence remains of the original kitchen other than the room volume, door, flue and window.**

When you remove Rowe from the significance of the property then all you are left with is the small, highly altered and substantially demolished remnant section of a service building.

The remnant building was identified in the report titled Manly's Sustainable Heritage prepared by Clive Lucas, Stapleton and Partners Pty Ltd dated 12 February 2008. It was determined at that time that the building did not reach any threshold for listing and that ***"It has lost its domestic context"*** (see attached).

We also note a number of relevant statements in the Robertson Report namely:

6.1 The prevalence of Thomas Rowe buildings in the Manly area

An additional historical research was excluded from this section of the project it must be noted that, without extensive research of Tender Notices, Rate Books and Building Applications, the extent of Thomas Rowe designed buildings in Manly cannot be determined with any certainty.

..... No certainty and cannot be relied on.

In our quick perusal of Tender Notices, the following Notices lodged by Thomas Rowe were uncovered. They consisted of three villas, one cottage (probably 'Roseville'), alterations to two residences and a pair of semi detached houses. It should be noted that their location cannot be determined without additional research.

..... Quick perusal, probably "Roseville", additional research required.. Unsubstantiated conjecture

needed. His contribution to sanitary reform and the improvement in building construction standards whilst an Alderman for the City and then Manly councils have not been identified either.

.....This statement then conflicts with the following:

Rowe, as an Alderman, was responsible for sanitary reforms in Sydney and the introduction of by-laws in Manly requiring Earth Closets. His own residence was a model installation prior to the existence of the municipal by laws imposed during his term in office. The surviving plans show that the location of the Earth Closet as being within the portion of the out buildings that no longer survives. The by-laws required that closets had to be emptied via a lane and not thru the house, however the villa subdivisions are without rear lanes.

..... No evidence or proof that these statements are factual. Roseville was built before Manly becoming a Council and he did not own, build or design Roseville. Unsubstantiated conjecture.

8.0 Conclusion and Recommendations

The previous rationale for not listing the building in 2007 was an assessment of it's physical fabric, without picking up on the association with the first Mayor of Manly, Thomas Rowe, or that it formed part of the outbuilding complex of a large villa that he designed for his family that faced Belgrave Street and the Park. Very little survives of Rowe's body of works in Manly undertaken between 1868 and 1890.

It is our opinion that No 21 Whistler Street (the former outbuilding of 'Roseville' later 'Restromel'), meets the criteria for listing as a Local item of environmental heritage under the Northern Beaches LEP under the following

criteria:

- *Historical significance*
- *Associative significance*
- *Aesthetic/Technical significance*
- *Rarity*

..... If you remove and association with Rowe the justification for listing across all criteria falls away, especially as Council's consultants are relying on this association for their proposed IHO. No evidence has been provided by Council that Rowe built or designed or owned Roseville, only conjecture, and evidence has been provided that he did not own, build or design Roseville.

As part of the listing process, a more thorough history should be prepared utilising the Rate Books and Building Application registers to determine the sequence of building on the site and owners of the site.

..... **THIS RECOMMENDATION HAS BEEN IGNORED BY COUNCIL.**

The preparation of the planning proposal has been rushed through without the necessary research.

The owner of the land has undertaken some of the additional historical research recommended in the Robertson Report with such research providing evidence that confirms that Rowe did not own the land or designed or built "Roseville" and that the addition to the south was between 1920 and 1950, not 1880. The Clive Lucas, Stapleton and Partners Report, prepared by Council in 2008, confirms our Heritage consultants findings that the remnant building fabric has been highly modified and no longer resembles its historical form or is used for its historical purpose.

The relevant evidence substantiates the facts as follows:

- Thomas Rowe did not own Roseville, Sydney Green owned Roseville and Charlotte Rowe was a tenant from 21 May 1875 until she passed away 18 months later;
- There is no evidence to suggest that Thomas Rowe designed and/ or built "Roseville";
- There is no evidence to suggest that Thomas Rowe lived permanently in "Roseville";
- The primary dwelling form known as "Roseville" was demolished some time ago with the only physical evidence remaining being a small remnant section of the service building backing onto Whistler Street;
- This remnant section of building has been highly modified and largely demolished such that no physical evidence remains of the earth closet, no physical evidence remains of the wash house other than room volume and no evidence remains of the original kitchen other than the room volume, door, flue and window.
- A review of the building was undertaken in 2007 with the decision being not to list the property. This is not a circumstance where the property was missed;
- Our client purchased the property on the basis that the Planning Certificate contained within the contract of sale confirmed no heritage listing;
- Notwithstanding, our client committed to undertaking formal pre-DA discussion with Council with the minutes raising "Nil" heritage concerns;
- On the basis of the formal pre-DA minutes our client committed resources to prepare a comprehensive DA;
- Our client undertook due diligence when purchasing the property and has committed significant consultant and financial resources since that time.

The retrospective heritage listing of buildings usually devalues the land and can cause devastating financial loss to the owner/s.

The planning power which enables the retrospective heritage listing of buildings must be applied with a significant degree of caution and absolute certainty based on fact rather than speculation.

The extra research we have carried out by our consultants to discover the evidence has substantially changed the known facts and the real position and proved the lack of association with Thomas Rowe. We have not had the opportunity to present it as we only received the reports last week and we had no idea or communications from Council that this was going to occur. We were expecting further work was required to be carried out as stated earlier. We note that there have been no objections received by Council for the proposal.

It is clear that Clive Lucas, Stapleton and Partners got it right in the first place as there is essentially no association with Thomas Rowe. The reality is that the heritage significance was primarily lost when Roseville was demolished and the rest was lost when the majority of the remnants outbuilding were demolished, substantially altered and added to at various times up to 1976.

Given the facts established in this matter, I am of the opinion that the endorsement of the Planning Proposal by the NB Local Planning Panel, and its progression to the DoP for a Gateway Determination, would represent an abuse of planning power and procedural injustice in the extreme.

Tonight's meeting represents an opportunity for the planning panel to defer this recommendation to ensure further mistakes do not occur and the evaluation continues with all the known facts and evidence at hand.